

## CHAPTER 5. COMPUTER MATCHING PROGRAMS

- 5-1 GENERAL. This chapter sets forth procedures for conducting matching programs. The Computer Matching and Privacy Protection Act of 1988 (CMPPA), which amends the Privacy Act, adds certain protection for subjects of Privacy Act records whose records are used in automated matching programs, and regulates the conduct of computer matching activities. The Act requires HUD to prepare written matching agreements specifying the terms under which matches are to be done.
- 5-2 DEFINITIONS. All terms defined, in the Privacy Act of 1974 and chapter one of this handbook apply. In addition, the CMPPA provides the following new terms.
- A. Matching Program. The comparison of automated records using a computer. Manual comparisons of printouts of two automated data bases are not included in this definition. A matching program covers the actual computerized comparison and any investigative follow-up and ultimate action. Public Law 100-503 divides computer matching programs into covered and non-covered matching programs. Two kinds of matching programs are covered: (1) matches involving Federal benefits programs, and (2) matches using records from Federal personnel or payroll systems of records.
1. Federal Benefit Matches. All four of the following critical elements must be present before a program is covered by the CMPPA. Questions concerning whether a match is covered by the CMPPA should be referred to the Privacy Act Officer.
- a. Computerized Comparison of Data. The record comparison must involve records from:
- (1) Two or more automated systems of records maintained by Federal agencies that are subject to the Privacy Act; or,
  - (2) A Federal agency's automated system of records and automated records maintained by a non-Federal agency or agent thereof.
- b. Categories of Subjects Covered. The Act covers only the following categories of record subjects:
- (1) Applicants (individuals initially applying for benefits) for Federal benefit programs;
  - (2) Program beneficiaries (individual program participants who are currently receiving or formerly received benefits); and,

- (3) Providers of services to support such programs.
  - c. Types of Programs Covered. Federal benefit programs providing cash or in-kind assistance to individuals.
  - d. Matching Purpose. The match must have as its purpose one or more of the following:
    - (1) Establish or verify initial or continuing eligibility for Federal benefit programs;
    - (2) Verify compliance with the statutory or regulatory requirements of such programs or,
    - (3) Recoup payments or delinquent debts under such Federal benefit programs.
- 2. Federal Personnel Matches. Matches comparing records from automated Federal personnel or payroll systems of records, or such records with automated records of State and local governments. Matches in this category must be for other than "routine administrative purposes" as defined in chapter one of this handbook.
- 3. Excluded matches. A match may meet the criteria established for computer matching, but be excluded if it falls under one of the CMPPA exclusionary clauses. Questions concerning whether a match falls under one of the following exclusions should be referred to the Privacy Act Officer.

- a. Statistical matches for which the purpose is solely to produce aggregate data stripped of personal identifiers.
- b. Statistical matches for which the purpose is to support a research or statistical project, the data from which may not be used to make decisions that, affect the rights, benefits or privileges of specific individuals.
- c. Pilot matches, such as small scale matches to gather benefit/cost data on which to premise a decision about engaging in a full-fledged matching program. A pilot match is forbidden unless it is expressly approved by the Data Integrity Board (DIB) Data developed during a pilot match may not be used to make decisions affecting the rights, benefits, or privileges of specific individuals.
- d. Law enforcement investigative matches by an agency

or component whose principle statutory function involves the enforcement of criminal laws, the purpose of which is to gather evidence against a named person or persons in an existing investigation. The match must flow from a civil or criminal law enforcement investigation already underway.

- e. Tax administration matches.
  - f. Routine administrative matches using predominantly Federal personnel records, provided the purpose is not to take any adverse action against Federal personnel, as defined in the Privacy Act.
  - g. Internal matches using only records from the Department's system of records. However, an internal match whose purpose is to take any adverse financial, personnel, disciplinary or other adverse action against Federal personnel is covered.
  - h. Background investigations and foreign counterintelligence matches.
- B. Recipient Agency. Federal agencies (or their contractors) that receive records from Privacy Act systems of records of other Federal agencies or from State and local governments to be used in matching programs. Recipient agencies are generally

assumed to be the beneficiary of a matching program, and are responsible for the reporting and publishing requirements of the Act.

- C. Source Agency. A Federal agency that discloses records from a system of records to another Federal agency or to a State or local governmental agency to be used in a matching; or a State or local governmental agency that discloses records to a Federal agency to be used in a matching program. The source agency provides input to HUD in preparing the agreement, and in carrying out the reporting responsibilities, including benefit/cost analysis.
- D. Non-Federal Agency. A state or local governmental agency that receives records contained in a system of records from a Federal agency to be used in a matching program. When HUD is a source agency for a match with a non-Federal agency:
- 1. The program area proposing the match will be responsible for publishing the notice in the Federal Register and reporting the matching to OMB and Congress. The Privacy Act Officer will provide guidance and assistance in preparing the documentation.
  - 2. The non-Federal agency will provide the data needed for

HUD to carry out its reporting responsibilities, including benefit/cost analysis.

- E. Federal Benefit Program. Any program funded or administered by the Federal government, or by any agent or State on behalf of the Federal government, that provides cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to U.S. citizens or aliens lawfully admitted for permitted residence.

5-3 The Data Integrity Board (DIB) A Data Integrity Board has been established to provide oversight and review of the department's computer matching agreements. The DIB reviews and approves ongoing matching programs, proposed matches, pilot matches, exclusions, extensions and renewals. HUD's DIB consists of representatives from the major program and administration offices (Office of Housing, Office of Public and Indian Housing, Administration, etc.) of the Department.

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The only two mandatory members are the Inspector General, who may not serve as Chairperson, and the senior official responsible for the implementation of the Privacy Act, who is the Assistant Secretary for Administration.

5-4 Conducting Matching Programs. HUD staff undertaking matching programs covered by the Act are required to comply with the following requirements.

- A. Prior notice to record subjects. Record subjects are to receive either direct or constructive notice that their records may be matched.
  - 1. Direct Notice. By direct notice when there is some form of contact between the government and the subject, e.g., information on the application form when they apply for a benefit or in a notice that arrives with a benefit that they receive;
  - 2. Constructive Notice. By constructive, e.g., publication of Privacy Act systems notices, routine use disclosures, and matching programs in the Federal Register. Constructive notice to record subjects is permissible only when direct notice is not feasible, e.g., emergency situations, certain investigative matches, etc.
- B. Federal Register Notices. The CMPPA requires agencies to publish notices in the Federal Register describing new or altered matching programs, and to submit reports to OMB, and to Congress. The report must be received at least 40 days prior to the initiation of any matching activity carried out under a new or substantially altered matching program. For renewals of continuing programs, the report must be dated at least 40 days prior to the expiration of any existing agreement. When the match is approved by the DIBs of all

Federal agencies participating, the Privacy Act Officer transmits the notice to the Federal Register, and the report to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and OMB. HUD is responsible for publishing the notice if it is the recipient agency or the match is with a non-Federal agency. The Privacy Act Officer will provide guidance on preparing the notice and reports. New or Altered Matching Program Reports should contain the following:

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1. Transmittal Letter. The transmittal letter should contain the name and telephone number of the individual who can best answer questions about the matching program. The letter should state that a copy of the matching agreement has been distributed to Congress as the Act requires. The letter to OMB may also include a request for waiver of the review, time period.
  2. Narrative Statement. The narrative statement should be brief. It should describe the purpose of the match, provide a description of security safeguards used to protect against any unauthorized access or disclosure of records used in the match, and if the cost/benefit analysis indicated an unfavorable ratio or was waived, an explanation of the basis on which the agency justifies conducting the match.
  3. Supporting Documentation. A copy of the Federal Register notice describing the matching program and a copy of the congressional report should be attached.
- C. Preparing and Executing Computer Matching Agreements. HUD managers and staff should allow sufficient lead time to ensure that matching agreements can be negotiated and signed in time to secure DIB decisions. For information purposes and for future planning of computer matches see Appendix F, Computer Matching Programs Timetable which shows the estimated time frames related to obtaining internal HUD clearances (program office, Privacy Act Officer, etc.), including specific publication reviews. Federal agencies receiving records from or disclosing records to non-Federal agencies for use in matching programs are responsible for preparing the matching agreements and should solicit relevant data from non-Federal agencies where necessary. Computer matching agreements must contain the following:
1. Purpose and Legal Authority. Since the CMPPA provides no independent authority for the operation of matching programs, HUD staff should cite a specific Federal or State statutory or regulatory basis for undertaking such programs.
  2. Justification and Expected Results. An explanation of why computer matching as opposed to some other administrative activity is being proposed and what the

expected results will be.

3. Records Description. An identification of the Privacy Act systems of records or non-Federal records, the number of records, and what data elements will be included in the match. Projected starting and completion dates for the matching program should also be provided. HUD staff should specifically identify the Federal system or Privacy Act systems of records involved.
4. Notice Procedures. A description of the individual and general periodic notice procedures.
5. Verification Procedures. A description of the methods HUD will use to independently verify the information obtained through the computer matching program.
6. Disposition of Matched Items. A statement that information generated through the match will be destroyed as soon as it has served the matching program's purpose and any legal retention requirements HUD established in conjunction with the National Archives and Records Administration or other cognizant authority.
7. Security Procedures. Administrative and technical safeguards to be used in protecting the information will be commensurate with the level of sensitivity of the data and will be fully described.
8. Records Usage, Duplication and Rediscovery Restrictions. A description of any specific restrictions imposed by either the source agency or by statute or regulation on collateral uses of the records used in the matching program. The agreement should specify how long a recipient agency may keep records provided for a matching program, and when they will be returned to the source agency or destroyed. In general, recipient agencies should not subsequently disclose records obtained for a matching program and under the terms of a matching agreement for other purposes absent a specific statutory requirement or where the disclosure is essential to the conduct of a matching program.

9. Records Accuracy Assessments. Any information relating to the quality of the records to be used in the matching program. Record accuracy is important from two standpoints. In the first case, the worse the quality of the data, the less likely a matching program will have a cost-beneficial result. In the second case, the Privacy Act requires Federal agencies to maintain records they maintain in Privacy Act systems of records to a standard of accuracy that will reasonably assure fairness in any determination made on the basis of the record. Thus, an

agency receiving records from another Federal agency or from a non-Federal agency needs to know information about the accuracy of such records in order to comply with the law. Moreover, the Privacy Act also requires agencies to take reasonable steps to ensure the accuracy of records that are disclosed to non-Federal recipients.

10. Comptroller General Access. A statement that the Comptroller General may have access to all records of a recipient agency or non-Federal agency necessary to monitor or verify compliance with the agreement. It should be understood that this requirement permits the Comptroller General to inspect State and local records used in matching programs covered by these agreements.

C. Benefit/Analysis The CMPPA requires that a benefit/cost analysis be a part of an agency decision to conduct or participate in a matching program. The intent of this requirement is to ensure that sound management practices are followed when agencies use records from Privacy Act systems of records in matching programs. The DIB may waive the benefit/cost requirement if it determines that such an analysis is not required and the waiver is consistent with OMB guidance. If a matching program is required by statute, the DIB may waive the benefit/cost analysis requirement in its initial review.

5-5 Due Process for Matching Subjects. The CMPPA prescribes certain due process requirements that the subjects of matching programs must be afforded when matches uncover adverse information about them.

A. Verification of Adverse Information. HUD cannot take any adverse action based solely on information produced by a matching program until such information has been independently

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verified and validated.

B. Notice and Opportunity to Contest. Agencies are required to notify marching subjects of adverse information uncovered and give them an opportunity to explain prior to making a final determination. Generally, individuals are given 30 days to respond to an adverse action, unless a statute grants a longer time.

C. Sanctions. If a record subject can demonstrate that he has been harmed by an agency violation of the CMPPA, the civil remedies of the Privacy Act are available to that record subject.

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